



Permissions Modernization Team
Ministry of the Environment, Conservation and Parks
Client Services and Permissions Branch
135 St. Clair Avenue West
Toronto Ontario, M4V 1P5

October 30, 2023

Re: Conservation Ontario's comments on "Streamlining environmental permissions for stormwater management under the Environmental Activity and Sector Registry" (ERO#019-6928)

Thank you for the opportunity to comment on "Streamlining environmental permissions for stormwater management under the Environmental Activity and Sector Registry" (ERO#019-6928). Conservation Ontario (CO) represents Ontario's 36 Conservation Authorities (CAs), which are local watershed management agencies, whose mandatory programs and services includes a variety of responsibilities and functions related to water resources and natural hazard management, as well as Drinking Water Source Protection.

Conservation Ontario believes that this proposal should be put on hold until resolution of our serious concerns related to the ongoing protection of sources of drinking water can be addressed. In addition, the proposal has inadequately addressed concerns related to natural hazard management, including flooding and erosion concerns arising from stormwater management. A detailed analysis and commentary is provided on the three key elements of this proposal in the attachment, along with recommendations for the Ministry's consideration however, a summary of those concerns includes:

- Stormwater management (SWM) sites that are Significant Drinking Water Threats should not be eligible to register on the Environmental Activity and Sector Registry (EASR). Source Protection Plan prescribed instrument policies were developed requiring the Province to ensure compliance with the applicable policies. This proposal would remove that protection.
- Prior to relying on a Licensed Engineering Practitioner (LEP) to make a determination as to whether works are identified as a significant drinking water threat mandatory Ministry-led training should be completed.
- No details have been provided by the Ministry regarding their auditing process to ensure compliance with EASRs. This represents a potential gap in the multi-barrier approach to protecting drinking water.

Conservation Ontario welcomes ongoing dialogue with the Ministry as it works to refine this proposal and to ensure the continued protection of sources of drinking water and mitigation of the risks arising from natural hazards. Thank you for the opportunity to provide comments on "Streamlining permissions for water takings for construction site dewatering activities and foundation drains" (ERO#019-6853). Please contact the undersigned for further discussion of these comments.

Sincerely,

A handwritten signature in black ink that reads "Leslie Rich". The signature is written in a cursive, flowing style.

Leslie Rich, RPP
Source Water Protection Manager

1 Attachment: Detailed Comments

c.c. All Conservation Authority CAOs/GMs

Attachment 1:
Conservation Ontario's Detailed Comments on "Streamlining environmental permissions
for stormwater management under the Environmental Activity and Sector Registry"
(ERO#019-6928)

The Ministry of the Environment, Conservation and Parks (MECP) is proposing regulatory changes under the *Environmental Protection Act*, the *Ontario Water Resources Act* and the *Clean Water Act* to streamline permissions related to stormwater management works. The three key elements of this proposal include:

- Creating a new regulation under the *Environmental Protection Act (EPA)* to allow certain privately-owned stormwater management works to self-register on the Environmental Activity and Sector Registry (EASR);
- Amending O. Reg. 525/98 under the *Ontario Water Resources Act (OWRA)* to remove the need for low impact development (LID) works to obtain an Environmental Compliance Approval (ECA); and,
- Amending O. Reg. 287/07 under the *Clean Water Act* by removing the need for, limiting, or restricting the types of policies to be included in Source Protection Plans where a significant drinking water threat is being managed through an EASR registration or prohibition.

Conservation Ontario (CO) offers the following detailed comments in response to the proposal.

Creating a new regulation under the Environmental Protection Act (Self-Registration of privately-owned stormwater management works on the EASR)

The MECP is proposing to create a new regulation under the *EPA* to streamline approvals for eligible stormwater management works servicing commercial, institutional, light industrial and multi-unit residential activities. Such eligible works would require the owner to meet regulatory requirements and follow existing Ministry standards, including preparation of a site-specific technical assessment performed by a licensed engineering practitioner (LEP).

Source-Water Protection

Conservation Ontario believes that this proposal should be put on hold until resolution of our serious concerns related to the ongoing protection of sources of drinking water can be addressed.

The proposal, as currently drafted, would require the LEP to undertake a site-specific technical assessment to determine whether the works are identified as a significant drinking water threat in a Source Protection Plan. It is noted that MECP currently has the responsibility for issuing Environmental Compliance Approvals (ECA) for stormwater.

Source Protection Plans in many cases include prescribed instrument policies addressing stormwater that require the Province to ensure compliance with the applicable policies. It is noted that while this requirement exists for the Province, Source Protection Plan policies cannot be legally binding on private developers / consultants. The proposal, as currently drafted, would transfer that responsibility to the proponent and would not only be inconsistent with the approved Source Protection Plans, but would weaken oversight of management of the stormwater works. Through the ECA framework, Ministry review provides critical technical oversight to ensure that the detailed design of a proposal reflects site-specific conditions and design needs in relation to source water protection. The ECA review and approval approach further provides a higher level of due diligence which includes consultation and addressing requirements for receiving water (including any source water protection areas). By transferring these works from the ECA to the EASR framework, Conservation Ontario is concerned that a lack of provincial oversight may result in weakened protections for sources of drinking water across the Province.

It is noted as well that there is not a large community of LEPs who are familiar with the requirements of drinking water source protection or local subwatershed targets and their applicability for sites included in the proposed list of eligible activities. Should the Province proceed with this proposal, it is urged that minimum standards for drinking water source protection training be established through the MECP. All LEPs dealing with significant drinking water threats should be required to successfully complete MECP-led training in advance of pursuing an EASR in these areas. In addition to training, consideration should be given to including checklists with each EASR registration to verify that the stormwater management design report includes all required information (e.g., applicable water quality, erosion and quantity targets for the site). Requiring an external peer review for these proposals prior to registration should also be considered. External peer reviews of a proponent's / consultant's assessment by local experts administering the source protection program (i.e., Source Protection Authorities) is integral to protecting drinking water sources.

Source Protection Authorities (SPA) are also concerned that moving to an EASR approach removes any right to appeal, should the SPA disagree with the LEP's assessment. It is integral that we use our best available science to protect sources of drinking water. It is understood that this proposal would also prohibit the identification of any new threats in the areas subject to an EASR.

Many stormwater management works are also subject to risk management plans for the management of salt. It is understood that in that case, the stormwater management works may be subject to both an EASR and a risk management plan which would likely eliminate any perceived streamlining benefit.

While Conservation Ontario believes that this proposal should be put on hold, should the Province choose to proceed with these changes, a transition timeframe should be put into

place to update Source Protection Plans to reflect an EASR approach for private storm water.

Natural Hazards

It is noted that ECAs cover all aspects of stormwater management works, including flood, erosion and quality control, while the EASR does not appear to address flooding and erosion controls. Further, the discussion paper provided with ERO #019-6928 addresses stormwater quality but does not appear to address flooding and erosion controls. Additional clarification is required from the Ministry as to how registration on the EASR for privately-owned stormwater management works address flood and erosion control to ensure no increased risks to public health, safety and property.

Additionally, the list of eligible activities includes private stormwater management works for multi-residential properties. While other proposed eligible activities would be subject to site plan control, multi-unit residential (under 10 units on a single parcel) are excluded from being subject to municipal site plan control except in prescribed circumstances. This creates a gap where CAs and municipalities do not have an instrument, other than the ECA process, to review proposed stormwater management works, including water quantity measures, for multi-unit residential properties. Should the proposed works be eligible for registration on the EASR, there is concern that water quantity control requirements to prevent flooding and erosion may not be appropriately addressed.

Further, some municipalities in Ontario are considering implementation of private stormwater management controls, including rooftop and parking lot storage, for Regional Storm controls. Given their importance in protecting downstream human health, safety and property, it is recommended that such works **not** be eligible for the EASR process and continue to require an ECA.

The discussion paper indicates that prior to registration on the EASR, the owner of the stormwater management works must obtain any authorizations or approvals from other regulators. While that is appropriate, consideration should be given to identifying gaps in approvals processes. For example, where stormwater works are taking place within an area regulated by the Conservation Authority under Section 28 of the *Conservation Authorities Act* permission may be required prior to development taking place however those requirements do not apply to the entire watershed. There may be similar gaps in municipal approvals. Upon completion of the gap analysis, assessment should be undertaken to ensure that these proposals will be receiving an appropriate level of oversight.

Inspection / Audit of EASR Registrations

While the proposal notes that the MECP will continue to audit the registry and inspect stormwater management works as needed to enforce compliance with the rules, no details have been provided about the proposed compliance framework. Further, this approach

represents a significant shift away from proactive review to a reactive approach where inspections may not occur in time to address non-compliance with EASR registrations (e.g., works may be underway or already completed). With little information regarding the Ministry's audit approach, including whether or not the Ministry intends to increase audits given the proposed increased use of the EASR for stormwater works, there is concern that the Ministry is seeking to potentially revise current approaches that represent protections to safe drinking water. Ontarians count on a robust multi-barrier approach to protecting our sources of drinking water to ensure that their health is protected.

Regulatory Amendments under the OWRA to Remove the Need for LID Works to Obtain an ECA

The MECP is proposing to expand the list of existing exemptions under O. Reg. 525/98 for certain low risk sewage works to obtain an ECA. The list currently allows low impact development (LID) works on residential properties, foundation drainage works, ultraviolet treatment to control mussels in water pipes and sewage works related to construction site dewatering to proceed without an ECA. It is now proposed that the regulation be amended to provide an exemption for all LID works, as well as drainage works for roadways and railway projects by Metrolinx.

Proper maintenance of any LID feature is directly linked to its performance. While the implementation of LID works on single private residences is supported, there needs to be assurance that proper ongoing maintenance will take place to achieve optimal outcomes and provide for long-term operation (e.g., continuity of operation, providing credit(s) for peak flows, phosphorus reduction, water balance and volume control and prevention of flooding, erosion and pollution issues). In lieu of the requirement for an ECA (which would include operation and maintenance responsibilities for the LID feature), it is recommended that measures be put in place to ensure proper operation and maintenance of the LID feature over time. One potential solution could be to require agreements between municipalities and landowners to ensure a specified party is accountable for the operation and maintenance of the LID feature; this could potentially be achieved through the use of the *Drainage Act*. Guidance for municipalities and others will be required. Without measures in place to ensure ongoing maintenance and proper operation, it is possible that this proposed exemption could result in a gradual degradation of the efficacy of the LID feature.

Under the lens of source water protection, if LID works, which may be a significant threat to drinking water, were exempted from the need for an ECA as proposed by MECP, Source Protection Committees would need to assess other ways of addressing any such threat, including the development of Risk Management Plan policies (under section 58 of the *Clean Water Act*). In that case, the Ministry may need to add Risk Management Measures appropriate for residential LID works to the Risk Management Measures Catalogue and may wish to add content specific to LID works to the Risk Management Official training (including how to recognize the difference between a residential LID feature and an

aesthetic feature, and how to properly maintain LID features to mitigate risks to drinking water). If the private LID works are within a Source Water Protection vulnerable area, perhaps this could be presented as a condition that would disallow the single private residence LID scenario from being 'exempt'. Protecting municipal drinking water sources must be of the utmost importance and responsibility of all Branches of the Ministry of Environment of Conservation and Parks in a cohesive and complementary manner.

Regulatory Amendments under the *Clean Water Act*

The MECP is proposing to amend O. Reg. 287/07 under the *Clean Water Act* by removing the need for, limiting, or restricting the types of policies to be included in Source Protection Plans where a significant drinking water threat is being managed through an EASR registration. The Ministry is also proposing to amend the regulation to allow for amendments to be made to Source Protection Plans without undergoing the existing amendment processes where the amendment is to remove policies that are no longer operative.

Conservation Ontario is not supportive of this proposed amendment given the reservations expressed related to the creation of a new regulation under the *Environmental Protection Act* (see above comments). In lieu of regulatory amendments, it is recommended that the Ministry work directly with Source Protection Committees on any requested changes to a Source Protection Plan. This process should maintain the intended rigour under the *Clean Water Act*, as contemplated under the prescribed instrument policies of a Source Protection Plan.

It is noted that the licensed engineering practitioner (LEP) would be required to make an assessment as to whether there is a significant drinking water threat prior to registration using the EASR system. There is, however, a lack of information for the consulting community on how to make that assessment and a requirement to make more information publicly available. All of these gaps will need time to be addressed and will require the LEP to contact the Source Protection Authority (SPA). This is a new assignment of responsibilities from the MECP to the regulated community and the SPA without corresponding implementation guidance and support.

Should the Province decide to proceed with this proposal it is requested that Conservation Ontario be directly consulted on proposed updates to the regulation to ensure there are no additional unintended consequences and that sources of drinking water are protected to the best of our ability within the new regulatory framework.

Service Delivery

It is noted that the proposal is expected to reduce burden on the regulated community and reduce regulatory red tape for sectors including housing, development and industrial

operations. Conservation Ontario is supportive of streamlining measures whenever they result in better outcomes and do not compromise public health and safety and the environment. Addressing significant threats to drinking water or impacts on natural hazards should not be considered red tape, however, there are always ways to improve service and Conservation Ontario would welcome a dialogue to that effect.

Lastly, the proposal notes that a potential benefit of allowing activities to register on the EASR is the ability for a registrant to proceed with the activity immediately, rather than waiting up to a year for Ministry review (as would be common for ECA reviews). As the Province considers opportunities to streamline the ECA process, it is recommended that a review be undertaken of the MECP's internal review process to identify opportunities to reduce review timelines. Through the previous transfer of review process some CAs have experience in reviewing ECAs for storm water and may have some suggestions for process improvements for the MECP to consider.

Conservation Ontario

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